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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

INGRID R. BRITT,

Defendant and Appellant.

A147176

(Marin County
Super. Ct. No. SC122638B)

This is an appeal from an order by the trial court denying a request by appellant Ingrid R. Britt to redesignate the felony offense of receipt of stolen property, to which she pleaded guilty in 2002, as a misdemeanor pursuant to Penal Code section 1170.18.¹

After appellant filed a timely notice of appeal, appellate counsel was appointed to represent her. Appointed counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*People v. Wende*) in which she raises no issue for appeal and asks this court for an independent review of the record. (See also *People v. Kelly* (2006) 40 Cal.4th 106, 124 (*People v. Kelly*).) Counsel attests that appellant was advised of her right to file a supplemental brief in a timely manner, but she has not exercised this right.

We have examined the entire record in accordance with *People v. Wende*. For reasons set forth below, we agree with counsel that no arguable issue exists on appeal. Accordingly, we affirm.

¹ Unless otherwise stated, all statutory citations herein are to the Penal Code.

FACTUAL AND PROCEDURAL BACKGROUND

On April 12, 2002, an amended complaint was filed charging appellant with receipt of stolen property (to wit, mail and checks) in violation of section 496, subdivision (a) (count one), and sale and transportation of a controlled substance in violation of Health and Safety Code section 11379, subdivision (a) (count two). The complaint further alleged that appellant had two prior felony convictions for possession of stolen property (§ 496.1), and various prior felony convictions within the meaning of section 1203, subdivision (e)(4).

On October 21, 2002, appellant, represented by competent counsel, pleaded guilty to both counts and admitted the enhancement allegations. Appellant received a nine-month suspended sentence and was placed on probation.

On July 20, 2015, appellant filed a petition pursuant to section 1170.18 to have her felony conviction for the offense of receiving stolen property reduced to a misdemeanor. On December 9, 2015, following a contested hearing, the trial court denied the petition upon finding appellant ineligible for relief because the total value of the stolen checks found in her possession exceeded \$950.

On December 16, 2015, appellant filed a timely notice of appeal of the trial court's order.

DISCUSSION

As mentioned above, neither appointed counsel nor appellant has identified any issue for our review. Upon our own independent review of the entire record, we agree none exists. (*People v. Wende, supra*, 25 Cal.3d 436; *Anders v. California* (1967) 386 U.S. 738, 744.)

“Proposition 47, which is codified in section 1170.18, reduced the penalties for a number of offenses.” (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879.) Included among those offenses is receipt of stolen property, which is now characterized as a misdemeanor so long as the value of the stolen property does not exceed \$950. (§ 496, subd. (a) [“if the value of the property does not exceed nine hundred fifty dollars (\$950), the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not

exceeding one year, if such person has no prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290”].)

“Section 1170.18 creates a process where persons previously convicted of crimes as felonies, which would be misdemeanors under the new definitions in Proposition 47, may petition for resentencing. Section 1170.18, subdivision (b) provides in part: ‘Upon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria for subdivision (a).’ Under subdivision (b) a person who satisfies the criteria in subdivision (a) of section 1170.18 shall have his or her sentence recalled and be sentenced to a misdemeanor (subject to certain exclusions not relevant here).” (*People v. Sherow, supra*, 239 Cal.App.4th at p. 879.) In addition, subdivision (f) of section 1170.18 authorizes a person, like appellant, who has “completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, [to] file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.” (§ 1170.18, subd. (f).)

The petitioner (to wit, appellant) has the burden of proving the value of the stolen property received does not exceed \$950, in which case he or she is entitled to relief under section 1170.18 absent any statutory exclusions. (*People v. Sherow, supra*, 239 Cal.App.4th at p. 880.)

Here, the trial court found appellant was not entitled to relief under section 1170.18 because the value of the stolen property found in her possession exceeded \$950. In reaching this decision, the trial court expressly stated at the hearing on appellant’s petition that it was relying on information relating to the value of the stolen checks in her possession that was contained within a Marin County Sheriff’s Supplemental Report, dated February 26, 2002 (report). As appellate counsel notes, while both parties were in possession of this report at the hearing, and while the trial court expressly relied upon it to deny appellant’s petition, neither party requested that the trial court admit or lodge the

report as an exhibit, nor did the trial court do so on its own initiative. Under these circumstances, we deem it appropriate to grant appellant's request to exercise our own discretion to augment the appellate record to include this relevant – indeed, dispositive evidence – pursuant to California Rules of Court, rule 8.155, subdivision (a). (See *Reed v. Reed* (1954) 128 Cal.App.2d 786, 791 [“when a document has been considered by the court and the parties as being in evidence, the fact that no formal offer in evidence was made will not exclude it from consideration as part of the record on appeal. [Citations.] ‘Where documents are not formally introduced, but it is apparent that the court and the offering party understood that they were in evidence, they must be so considered.’ (10 Cal.Jur. 865, § 144.)”].)

Moreover, we agree with the trial court that this evidence renders appellant ineligible for the relief she seeks pursuant to section 1170.18. Specifically, the report reflects that there were three stolen checks found in appellant's possession written in the amounts of \$2,180, \$1,100 and \$1,800, respectively. Thus, each of the stolen checks exceeds the \$950 statutory ceiling for designating an offense of receiving stolen property as a misdemeanor. (*People v. Salmorin* (2016) 2016 DJDAR 7328; § 496, subd. (a); see also § 492 [“If the thing stolen consists of any evidence of debt, or other written instrument, the amount of money due thereupon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, is the value of the thing stolen”].) Accordingly, we conclude the trial court properly denied appellant's petition.

Thus, having ensured appellant has received adequate and effective appellate review, we affirm the trial court's order. (*People v. Kelly, supra*, 40 Cal.4th at pp. 112-113.)

DISPOSITION

The trial court's order to deny appellant's petition for relief under section 1170.18 is affirmed.

Jenkins, J.

We concur:

Pollak, Acting P. J.

Siggins, J.

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